

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

**Martin P. Murphy
7691 Aldersyde Drive
Middleburg Heights, Ohio 44130**

Plaintiff,

vs.

**Cuyahoga County Ohio
c/o County Executive,
Edward Fitzgerald
1219 Ontario Street
Cleveland, Ohio 44113**

Defendant.

CASE NO:

JUDGE:

**Verified Complaint for Declaratory Relief
and Injunctive Relief – Request for
Temporary Restraining Order, Preliminary
and Permanent Injunction & for
Appointment of Counsel for Public
Servant/Attorney Fees**

Plaintiff, Martin P. Murphy, by and through the undersigned counsel, as and for his cause of action and complain against Defendant, Cuyahoga County Ohio, states and alleges the following:

1. Martin P. Murphy is a resident of the State of Ohio, Cuyahoga County who resides at 7691 Aldeysyde Drive, Middleburg Heights, Ohio 44130.

2. Defendant, Cuyahoga County Ohio, is a duly organized and existing political subdivision.
3. Edward Fitzgerald is the Cuyahoga County Executive and chief executive officer of Cuyahoga County.
4. Cuyahoga County maintains a Board of Revision authorized pursuant to Ohio Revised Code 5715 *et seq.* (hereinafter the “Statutory Board of Revision”)
5. Cuyahoga County acknowledges on its own website that its Board of Revision is authorized pursuant to “O.R.C. § 5715.” A copy of such acknowledgment is attached hereto as “Exhibit A.”
6. Pursuant to O.R.C. § 5715.02, the Statutory Board of Revision is comprised of three members, the County Treasurer, County Auditor, and a member of the Board of County Commissioners. Each such official may appoint one qualified employee from the official’s office to serve in the official’s place in accordance with O.R.C. § 5715.02. At all times relevant herein, the three members of the Statutory Board of revision were Wade Steen (Cuyahoga Fiscal Officer), Richard Sensenbrenner (Cuyahoga Treasurer
7.) and Matt Carroll (Chief of Staff for the County Executive serving as Executive Edward’s Fitzgerald’s delegate pursuant to Cuyahoga County Charter Section 2.03). (The County Fiscal Officer serves in place of the County Auditor pursuant to Cuyahoga County Charter Section 5.02(2) passed by in the November 3, 2009 general election that became effective January 1, 2010. The County Executive serves in place of the Board of Commissioners pursuant to Cuyahoga County’s home rule and charter)

8. Pursuant to O.R.C. § 5715.09, the Statutory Board of Revision is to “organize annually on the second Monday in January.”
9. On January 9, 2012, the Statutory Board of Revision met and held its annual meeting at the multi-purpose room located on the fourth floor of the Cuyahoga County Administration Building. Present at the meeting were the three members of the Board, Wade Steen, Richard Sensenbrenner and Matt Carroll. Also present were nineteen of the twenty members of charter appointed boards. In addition, David Lambert, Assistant County Prosecutor and Chief of Civil Division (and Council for the Board of Revision), Majeed Makhoul, Cuyahoga County Director of Law for Executive Fitzgerald, and James Boyle, Board Liaison for Executive Fitzgerald were each in attendance.
10. A true and accurate copy of the minutes of the Annual Meeting of the Statutory Members of the Cuyahoga County Board of Revision is attached hereto as Exhibit B and incorporated by reference as if fully re-written at length. (hereinafter referred to as the “Annual Meeting”)
11. The first order of business at the Annual Meeting was the statutorily mandated election of a chairman for the ensuing year as required by O.R.C. § 5715.09 which took place.
12. The second order of business at the Annual Meeting was the election and appointment of an **Administrator** for the Cuyahoga County Board of Revision.
13. Martin Murphy was nominated and unanimously appointed **Administrator** for the Cuyahoga County Board of Revision.

14. Since January 9, 2012, Martin P. Murphy is and always been the Administrator of the Cuyahoga County Board of Revision and he brings this action as such Administrator.
15. Various other business was conducted and the Annual Meeting was adjourned.
16. The January 9, 2012, minutes of the Annual meeting were unanimously approved and accepted by the three members of the Board at a meeting of the Board of Revision lawfully and properly held on February 23, 2012.
17. Since January 9, 2012, Martin Murphy has been the **Administrator** for the Cuyahoga County Board of Revision. (A true and accurate copy of an example official Board of Revision correspondence sent out after January 9, 2102 identifying Martin Murphy as Administrator of the Cuyahoga County Board of Revision on January 27, 2012 is attached hereto as Exhibit C)
18. For 16 months from August 2010 until the January 9, 2012 appointment as Administrator, Martin Murphy was hired to overhaul and manage the Board of Revision and did such job as Acting Administrator.
19. On May 9, 2012, Martin Murphy received a notice from Cuyahoga County Executive Edward Fitzgerald Department of Human Resources Director of Human Resources & Employment Counsel Elise Hara that Mr. Murphy's position as a "Program Officer Manager is abolished" and that Mr. Murphy is "laid off."
20. The next day, on May 10, 2012, The Plain Dealer published that Shelley Davis, a former Summit County Administrator, was hired to succeed Mr. Murphy.
21. Mr. Murphy has never received notice of termination as Administrator for the Statutory Board of Revision.

22. Since January 9, 2012, to the present, there has never been a Statutory Board of Revision Meeting to terminate Mr. Murphy from Administrator or to appoint Ms. Davis Administrator.
23. Upon information and belief, Ms. Davis is to act as Administrator for the Statutory Board beginning Monday May 14, 2012.
24. Upon information and belief, Ms. Davis has not been appointed Administrator by the Statutory Board of Revision.

COUNT ONE- Declaratory Relief

25. Plaintiff incorporates each and every fact, allegation and exhibit set forth above as and for this paragraph.
26. Martin Murphy is the duly and lawfully appointed Administrator for the Cuyahoga County Board of Revision.
27. The termination of Mr. Murphy as “program manager” by the County Executive has no bearing on Mr. Murphy’s role as Administrator for the Cuyahoga County Board of Revision.
28. Any attempt by the County Executive directly or indirectly through his Department of Human Resources to terminate Mr. Murphy as Administrator for the Cuyahoga County Board of Revision is unlawful and contrary to O.R.C. 5715 *et seq.*
29. Any attempt by any person to fill the role of Administrator without appointment by the three member statutory Board of Revision pursuant to a lawfully convened meeting is contrary to Ohio law and O.R.C. 5715 *et seq.*

30. The actions of the County Executive to date replacing Mr. Murphy with a new Administrator under the guise of terminating Mr. Murphy in another role is arbitrary, capricious, unreasonable, bad faith, and unlawful.
31. Martin Murphy is the true and lawful current Administrator for the Cuyahoga County Board of Revision with all powers inherent thereto.
32. A controversy exists regarding declaration of the true and lawful current Administrator for the Cuyahoga County Board of Revision.
33. Plaintiff is entitled to declaratory relief declaring him the true and lawful current Administrator for the Cuyahoga County Board of Revision.
34. Therefore, a declaration of rights will serve to terminate this controversy before one of the parties suffers irreparable damage.

COUNT TWO – Injunctive Relief

35. Plaintiff incorporates each and every fact, allegation and exhibit set forth above as and for this paragraph.
36. Plaintiff has sufficient evidence, as described above and herein, to demonstrate a strong likelihood of success on the merits of his claim against the Defendant
37. Plaintiff requests injunctive relief in the form of a temporary restraining order, preliminary injunction, and permanent injunction against the Defendant preventing the Defendant from firing Mr. Murphy and hiring his replacement (Shelly Davis or otherwise).
38. Plaintiff further requests injunctive relief in the form of a temporary restraining order, preliminary injunction, and permanent injunction against the Defendant from

interfering or obstructing Plaintiff from carrying out his obligations to the residents of Cuyahoga County as Administrator for the statutory Cuyahoga County Board of Revision.

39. Absent injunctive relief, Plaintiff will suffer irreparable injury and there is absolutely no adequate remedy at law.
40. The public interest will be greatly served by the granting of this injunctive relief as only the true and lawful Administrator should be carrying on the lawful activities of the statutory board.
41. Plaintiff asks that no bond be issued as this is public business for which the public should not have to pay to protect themselves.

COUNT THREE – Legal Fees/ Appointment of Counsel

42. Plaintiff incorporates each and every fact, allegation and exhibit set forth above as and for this paragraph.
43. As the true and lawful Administrator for the statutory Cuyahoga County Board of Revision, Plaintiff has the right and the County has the obligation to represent Plaintiff and/or retain and pay for counsel on behalf Plaintiff to assert his lawful rights as county employee for county business.
44. The controversy at issue herein involves public business and resolution of this controversy with the use of public funds for legal fees for a public purpose promotes the general welfare, prosperity and contentment of all of the residents and inhabitants of Cuyahoga County.

45. O.R.C. 305.14 sets forth the procedure upon which the county prosecutor or the county commissioner/county executive may make application to employ legal counsel to represent a county employee for public business. And, Ohio case law is clear that when there is a conflict of interest with the county prosecutor and the county commissioner/county executive, a public servant may make application himself.
46. Due to the obvious conflict of interest, the County Prosecutor may not represent both Mr. Murphy and the County Executive at the same time for this action.
47. Furthermore, Assistant Cuyahoga County Prosecuting Attorney David Lambert, who works for the County Prosecutor in its civil division as its chief, was present at the January 9, 2012 meeting and will likely be called upon as a witness to testify to the action taken at the Annual Meeting, thus creating a further conflict for representation of the County Prosecutor on behalf of either Mr. Murphy or the County Executive.
48. There is likewise a conflict with the County Executive making application in a controversy that involves his decision to unilaterally terminate Mr. Murphy and hire a replacement Administrator without proper authority or procedure.
49. Plaintiff seeks compensation for his legal fees to protect the public interest and for the cost of outside counsel to be employed at the public's expense. In the alternative, Plaintiff requests this Court appoint counsel to represent the Plaintiff at Defendant's costs and to reimburse Plaintiff for his legal fees to date.

WHEREFORE, Plaintiff prays for judgment against Defendant for:

1. Declaratory relief declaring Martin Murphy the Administrator for the Statutory Cuyahoga County Board of Revision pursuant to lawful appointment;
2. An order enjoining, both temporarily and permanently, the Defendant and its officers, agents, servants, and employees from terminating Martin Murphy as Administrator except through lawful action by the Statutory Board;
3. An order enjoining, both temporarily and permanently, the Defendant and its officers, agents, servants, and employees from replacing Martin Murphy as Administrator with Shelly Davis or any other except through lawful action by the Statutory Board;
4. Further declaratory relief consistent with the injunctive relief granted;
5. An Order requiring Defendant to pay for counsel of Plaintiff's choice or in the alternative at the selection of the Court and to reimburse Plaintiff for his attorney fees and costs;
6. For costs of suit, including attorney fees and cost;
7. And for such other legal or equitable relief as this Court deems just and proper.

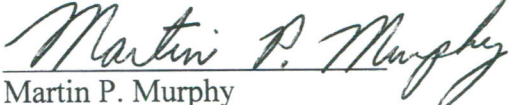
Respectfully submitted,



David M. Leneghan, Esq. (0062025)
200 Treeworth Blvd., Suite 200
Broadview Heights, Ohio 44147
(440) 223-4260 Fax (440) 838-4260
leneghanlaw@yahoo.com

VERIFICATION

Plaintiff, Martin P. Murphy, verifies that the facts set forth in the Verified Complaint are true and correct to the best of his knowledge, information and belief and are based upon his own knowledge, information or belief.


Martin P. Murphy

On this 13th day of May 2012, before me personally appeared Martin P. Murphy, known to me to be the individual who executed the foregoing instrument, and being duly sworn, did depose and say that the statements contained therein are true.



David M. Leneghan, Esq.

Notary Public

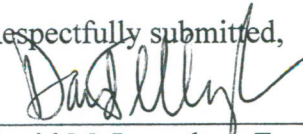
My comm. has no expiration.

DAVID M. LENEGHAN, ATTY.
IN THE STATE OF OHIO
My Commission has No Expiration Date
Section 147.03 O.R.C.

CIV. R. 65 (A)(2) VERIFICATION OF COUNSEL

The undersigned certifies that a true and accurate copy of the foregoing, along with this verification has been served by the undersigned pursuant to Civ. R. 65(A)(2) upon the Defendant, Cuyahoga County, Ohio by the undersigned on this 14th day of May, 2012 by personally hand delivering a copy to the office of the Cuyahoga County Executive at 1219 Ontario Street, Cleveland, Ohio at _____ A.M./P.M. as notice of Plaintiff's request for injunctive relief required by Civ. R. 65(A)(2). Pursuant to this Verification, notice is hereby provided that the undersigned will file the attached complaint on May 14, 2012. The Defendant and/or its counsel may contact the undersigned for the exact time of filing, or if the Defendant or its counsel chooses to attend the temporary injunctive order hearing that is expected to take place after the filing, otherwise the temporary restraining order hearing may proceed ex parte.

Respectfully submitted,



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GOVERNMENT RESIDENTS VISITORS BUSINESS A-Z DIRECTORY EMPLOYMENT ONLINE SERVICES CALENDAR



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County Administration Building
1219 Ontario Street, Room 232
Cleveland, Ohio 44113

Telephone: 216-443-7195

FAX: 216-443-8282

 Website: www.bor.cuyahogacounty.us

Responsibility:

The Board of Revision has the responsibility of investigating, hearing, and deciding all valid and timely filed complaints relating to the valuation of real property as appears on the Auditor's tax duplicate. It must journalize its decisions, send notices of hearings and decisions, certify its action to the Auditor for any changes, receive appeals from its decisions, notify any parties to the proceedings and prepare transcripts for appeals, and certify the subsequent appeal decisions to the Auditor for any correction. Annually, its approval is needed before the Auditor's tax list is advertised and sent to the Tax Commissioner for approval and before the Auditor can strike personal property items considered uncollectible for five years from the cumulative tax list and duplicate.

Appointing Authority

Cuyahoga County

Length of Term

9 Members serve at the pleasure of their appointing authorities

Public Meetings:

An organizational meeting is held annually on the second Monday in January. Other meetings are scheduled as required.

Authorization:

O.R.C. §5715

Date	Item	Files
10/18/2012	BOR Board Meeting	
7/19/2012	BOR Board Meeting	
4/19/2012	BOR Board Meeting Canceled	

[View by Year](#)
[2012](#)

The majority of the Boards and Commissions in Cuyahoga County are Citizen Policy Making and Advisory Boards and Commissions. All of these boards and commissions are governed by the laws and regulations that have authorized them. Members represent the specific mission of the boards or commission to which they have been appointed.

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January 9, 2012 at 4:00 pm
Notice posted

Minutes

Annual Meeting of the Statutory Members of the Cuyahoga County Board of Revision January 9, 2012 at 4:00 P.M

Pursuant to Ohio Revised Code Section 5715.09, the annual meeting of the Cuyahoga County Board of Revision was scheduled to take place on Monday, January 9, 2012 at 4:00 P.M. at the multi-purpose room located on the fourth floor of the Cuyahoga County Administration Building. Required legal notices were provided and posted.

Cuyahoga County Fiscal Officer **Wade Steen**, Secretary of the Board pursuant to Ohio Revised Code Section 5715.09, called the meeting to Order at 4:08 P.M. Acting Administrator for the Board of Revision, Martin Murphy, called the roll. Present from the Statutory Board were:

- **Wade Steen**, Cuyahoga County Fiscal Officer;
- **Richard Sensenbrenner**, Cuyahoga County Treasurer; and,
- **Matt Carroll**, Chief of Staff for the County Executive (Serving as Executive Edward FitzGerald's delegate pursuant to Cuyahoga County Charter Section 2.03).

Additionally, nineteen of the twenty members of the Charter-appointed Boards were present. (Note: there is one current vacancy).

Board Secretary **Steen** asked for any Public Comment. No comments were made.

At 4:12 P.M., Board Secretary **Steen** recognized Assistant Cuyahoga County Prosecuting Attorney David Lambert. Attorney Lambert stated that he had received a request for a legal opinion from the Cuyahoga County Council. Lambert asked Board Secretary Steen to adjourn the meeting until certain operational matters were clarified. **Steen** noted the mandatory language included in the Ohio Revised Code regarding the date of the Board of



Revision's meeting and **Steen** stated that any pending issues could be revisited at a later date, if necessary.

The election of the Chairman of the Board of Revision was opened for nominations by Board Secretary **Steen**. **Steen** nominated Cuyahoga County Executive **Edward FitzGerald**. This nomination was seconded by Mr. **Sensenbrenner**. No further nominations were offered and **Steen** moved to close the nominations. This motion was seconded by **Sensenbrenner**.

Ayes: **Steen, Sensenbrenner, Carroll**

Nays: None

The Motion was approved.

Steen called for the vote to name **FitzGerald** as Chairman of the Board of Revision.

Ayes: **Steen, Sensenbrenner, Carroll**

Nays: None

FitzGerald was elected as Chair and Secretary **Steen** offered his congratulations.

Steen called for a motion to appoint the Administrator to the Board of Revision. **Carroll** nominated Martin P. Murphy to serve in this position. This nomination was seconded by **Steen**. A roll call vote on this motion was taken:

Ayes: **Steen, Sensenbrenner, Carroll**

Nays: None

Murphy was approved as the Administrator for the Cuyahoga County Board of Revision.

The Board next moved to address various matters dealing with the administration and operation of the Board of Revision. A motion was made by **Sensenbrenner** that the Statutory Board reaffirm and ratify the decisions and actions of the Appointed Boards made during 2011. This Motion was seconded by **Steen**.

Ayes: **Steen, Sensenbrenner, Carroll**

Nays: None

The Motion was approved.

A motion was made by **Sensenbrenner** that the Statutory Board acknowledge and reconfirm the independence and impartiality of the Appointed Board Members. This Motion was seconded by **Steen**. A roll call vote was made.

Ayes: **Steen, Sensenbrenner, Carroll**

Nays: None

The Motion was approved.

Administrator Murphy provided a review of the operations of the Board of Revision in 2011. This review included a synopsis of the number of cases filed, the number of cases resolved and various staffing matters.

Additionally, proposed Rules of Procedure were introduced for the day-to-day operation of the Board of Revision. These proposed Rules would be reviewed and public comment accepted regarding changes, additions or deletions that might be warranted.

Steen set upcoming meetings on the following dates:

1. February 23, 2012;
2. April 19, 2012;
3. July 19, 2012; and
4. October 18, 2012.

As there was no further business before the Board of Revision, **Steen** called for a Motion to Adjourn. The Motion was seconded by **Carroll**. The roll call was taken.

Ayes: **Steen, Sensenbrenner, Carroll**

Nays: None

The meeting was adjourned at 4:45 P.M.

Cuyahoga County Board of Revision

County Administration Building Room 222
1219 Ontario Street Cleveland, Ohio 44113

(216) 443-7195 / Ohio Relay Service 711

Fax: (216) 443-8282

January 27, 2012

KATANAS L.L.C.,
3300 E 87 ST
CLEVELAND, OH 44104

Re: Complaint No. 201003020006
Complaint No. 201006070411
(Cleveland Municipal School District)
Parcel No. 127-09-002
Journal No. 104B-12

Dear Taxpayer:

I am writing to inform you that upon consideration of the evidence and testimony presented at your oral hearing, the Board of Revision found the market value of the property to be \$180,000. Thus, there is no change in value on the above parcel for the tax year 2009. As Administrator of the Board of Revision, it is my duty to inform you of their action.

In order to assure your right to pursue this complaint further, you may appeal this decision directly to the Court of Common Pleas of Cuyahoga County pursuant to Section 5717.05, or the Ohio Board of Tax Appeals under the provisions of Section 5717.01 of the Ohio Revised Code within 30 days from the date of mailing of this letter.

If you have any questions, please call the Board of Revision at (216) 443-7195.

Respectfully,



Martin P Murphy, Administrator
Cuyahoga County Board of Revision

MPM\gfl
CERTIFIED MAIL
cc: K. Scott Carter Esq.
Brindza McIntyre & Seed LLP

